

“made generally available to its securityholders” if the registrant:

(1) Is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and

(2) Has filed its report or reports on Form 10-K and Form 10-KSB, Form 10-Q and Form 10-QSB, Form 8-K, Form 20-F, Form 40-F, or Form 6-K, or has supplied to the Commission copies of the annual report sent to securityholders pursuant to rule 14a-3(c), containing such information.

A registrant may use other methods to make an earnings statement “generally available to its securityholders” for purposes of the last paragraph of section 11(a).

(c) For purposes of the last paragraph of section 11(a) only, the *effective date of the registration statement* is deemed to be the date of the latest to occur of (1) the effective date of the registration statement; (2) the effective date of the last post-effective amendment to the registration statement, next preceding a particular sale by the registrant of registered securities to the public filed for purposes of (i) including any prospectus required by section 10(a)(3) of the Act, (ii) reflecting in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement, or (iii) including any material information with respect to the plan or distribution not previously disclosed in this registration statement or any material change to such information in the registration statement, or (3) the date of filing of the last report of the registrant incorporated by reference into the prospectus, and relied upon in lieu of filing a post-effective amendment for purposes of paragraphs (c)(2) (i) and (ii) of this rule, next preceding a particular sale by the registrant of registered securities to the public.

(d) If an earnings statement was made available by “other methods” than those specified in paragraphs (a) and (b) of this section, the earnings statement must be filed as exhibit 99 to the next periodic report required by

section 13 or 15(d) of the Exchange Act covering the period in which the earnings statement was released.

[48 FR 44770, Sept. 30, 1983, as amended at 56 FR 30054, July 1, 1991; 58 FR 14669, Mar. 18, 1993]

§ 230.161 Amendments to rules and regulations governing exemptions.

The rules and regulations governing the exemption of securities under section 3(b) of the Act, as in effect at the time the securities are first bona fide offered to the public in conformity therewith, shall continue to govern the exemption of such securities notwithstanding the subsequent amendment of such rules and regulations. This section shall not apply, however, to any new offering of such securities by an issuer or underwriter after the effective date of any such amendment, nor shall it apply to any offering after January 1, 1959, of securities by an issuer or underwriter pursuant to Regulation D or pursuant to Regulation A as in effect at any time prior to July 23, 1956.

[23 FR 4454, June 20, 1958]

§ 230.162 Submission of tenders in registered exchange offers.

(a) Notwithstanding section 5(a) of the Act (15 U.S.C. 77e(a)), offerors may solicit tenders of securities in an exchange offer subject to § 240.13e-4(e) or § 240.14d-4(b) of this chapter before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules.

(b) Notwithstanding section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)), a prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) need not be delivered to security holders in an exchange offer subject to § 240.13e-4(e) or § 240.14d-4(b) of this chapter, so long as a preliminary prospectus, prospectus supplements and revised prospectuses are delivered to security holders in accordance with § 240.13e-4(e)(2) or § 240.14d-4(b) of this chapter, as applicable.

[64 FR 61450, Nov. 10, 1999]